IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.37/2001

Shri Vrajesh Anandrao
Kerkar, major, son of
Anandrao Kerkar, Employee,
residng at House No.128,
Village Kerim, Pernem Taluka. ..... Appellant.

V/s.

1. Shri Yeshwantrao
Narayanrao Kerkar, aged 69
years, married, landlord;

2. Smt. Laxmibai
Yeshwantrao Kerkar, aged
60 years, housewife and
landlady, both resident of
house No.128, Village
Kerim, Pernem Taluka. ..... Respondents.

Mr. J.P. Mulgaonkar, Advocate for the appellant.

Mr. M.S. Usgoankar, Sr. Advocate with Mr. Sudesh M.S. Usgaonkar and Mr. Sanjay Sardessai, Advocate for the respondents.

CORAM : F.I. REBELLO, J.

DATE : JULY 3, 2003.

ORAL JUDGMENT :

In a suit filed by the present respondents, against the appellant herein and one Smt. Rukminibai Narayanrao Kerkar, since deceased, the reliefs, amongst others, which were sought, were for a declaration that the Settlement dated 25.8.1993 be declared null and void; for further declaration that the Power of Attorney dated 3.12.1992 be declared null and void and an injunction to restrain the appellant herein or any

person claiming through them from taking or collecting income, from alienating or creating any encumbrance on the suit properties. In the suit, as filed, the averments are that the plaintiff was enjoying parts of the property. Further averments are that the defendant No.1 at the time when she made the deed, was suffering from general disabilities of old age and she was suffering from loss of memory, i.e. amnesia. The other averments need not be adverted to as they are not necessary in view of the order to be passed. During the pendency of the proceedings, defendant No.1 expired. Legal heirs of defendant No.1 have been brought on record. The legal heirs did not oppose the reliefs as sought for by the plaintiffs.

On an application dated 31.1.2001, the trial Court straight away proceeded to appoint a Receiver. It is that order which is subject matter of the present appeal.

On behalf of the appellant it is contended that the trial Court did not address itself to the tests required for appointment of a receiver and in these circumstances, the order should be set aside. A Court when it seeks to appoint a receiver must address itself to the tests as laid down in T.Krishnaswamy Chetty v.

C. Thangavelu Chetty and ors. A.I.R. 1955 Madras 430. Those aspects could have been gone into if the appeal was otherwise properly constituted.

In the instant case, though defendant No.1 had been sued basically challenging the deed of settlement and the power of attorney, the legal heirs who have been brought on record, are supporting the claim of the respondent No.1 herein, who claim also right to the property. Under these circumstances, it will not be possible to hear the appeal as constituted in absence of the LRs, who have otherwise supported the case of respondent No.1.

In the light of that, the appeal as filed will have to be disposed of on the ground that it is not properly constituted. However, considering the facts and circumstances and the controversy involved, the trial Court is directed to dispose of the suit expeditiously and at any rate on or before 30th June, 2004.

With the above directions, the appeal stands disposed of. Registry is directed to send back the records to the trial Court. The Receiver is directed to submit the accounts every six months before the

trial Court.

The Receiver shall exercise all the powers to maintain the suit properties, except the powers to sell, transfer, and alienate the suit properties.

F.I. REBELLO, J.

ssm.